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July 7, 2015

**Via ECF**

Honorable Robert M. Levy  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: No. 13 Civ. 04427-NGG-RML: Delgado et al v. Ocwen Loan Servicing, LLC et al.**

Dear Judge Levy:

On behalf of Plaintiffs and the proposed Class and in accordance with Local Civil Rule 37.3, we write to request a conference next Tuesday, July 14 at 4:30 p.m., which is an agreed-upon date by all parties. Chambers has informed us this date is available.

The parties need the Court's assistance in resolving certain ESI disputes with the Cross Country Defendants and disagreements with all Defendants regarding the timing of depositions. Given that Plaintiffs' counsel intends to refer to a number of hard-copy documents when discussing the ESI dispute and have their ESI consultant present, we request that the conference be held in the courtroom, and that defense counsel be allowed to participate by phone if they wish. Both counsel for Defendant Ocwen Loan Servicing and Cross Country have informed us they intend to appear by phone.

**Overview of the Disputes**

- A. *ESI*: Despite multiple communications between counsel, Plaintiffs have been unable to reach agreement with Cross Country on the keywords to be used for the searches required by the ESI Protocol. (ECF No. 65). It is Plaintiffs' position that Cross Country has not complied in good faith with the Protocol's requirement that the parties "negotiate keywords with the opposing party." *Id.* ¶ II(C). Further, Cross Country also refuses to use certain of Plaintiffs' proposed searches when searching its custodians' data bases.

At the conference, we will have our ESI consultant present to discuss why Plaintiffs' proposed search terms are reasonable and should be utilized.

- B. *Depositions of the Named Plaintiffs*: As discussed at our last status conference, Plaintiffs agreed to produce for depositions the four named Plaintiffs from California and New York. After conferring with these Plaintiffs and learning that all had long planned family vacations and family responsibilities through July to early August (aside from the previously scheduled vacations of Plaintiffs' counsel), Plaintiffs proposed firm dates on

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August 19, 22, and September 3 for the four Plaintiffs. Defendants will not agree to these dates, and just last week noticed the depositions for July 22 and 23.

To avoid Plaintiffs having to file a motion for a protective order, we are hoping the Court intervenes so that the dates can go forward as Plaintiffs propose. This brief extension will not delay the parties' progress, as the case is moving ahead on many other fronts. The parties are still briefing Defendants' two separate motions to dismiss the Complaint, and discovery is occurring on an ongoing basis. Such discovery includes Plaintiffs' preparation of responses to voluminous written discovery propounded by Defendants, the parties' remaining discussions concerning ESI custodians and search terms, the availability of ESI stored on backup tapes, and the search of customer support databases.

For the foregoing reasons, Plaintiffs therefore request that Your Honor confirm the conference for July 14 at 4:30 p.m.

Respectfully submitted,

/s/ J. Burkett McInturff  
J. Burkett McInturff

cc: All counsel of record (via ECF)